



The Attorney General of Texas

June 16, 1981

MARK WHITE
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

1607 Main St., Suite 1400
Dallas, TX. 75201
214/742-8844

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002
713/50-0866

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

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Honorable James B. Bond
Vice Chancellor for Legal Affairs &
General Counsel
Texas A & M University System
College Station, Texas 77843

Open Records Decision No. 273

Re: Availability to the public of
names of finalists for position of
Texas A & M University President,
of names of all candidates, and
background information

Dear Mr. Bond:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of the names of persons considered for the position of President of Texas A & M University, and related information.

You state that, when the position of president became vacant in August 1980, the Board of Regents of the Texas A & M System authorized, under specified guidelines, the formation of a search advisory committee, whose members would be appointed by the chairman of the board of regents. The Chancellor of the Texas A & M University System was to serve as the committee's executive officer. Two regents were selected as members, and one other member was an administrative officer of the system. No other member of the committee was directly affiliated with the Texas A & M System. Nevertheless, the guidelines adopted by the board of regents directed the committee "to make its evaluations of candidates and recommendations to the Board." Furthermore, members of the committee were reimbursed for the expenses of travel, meals and lodging. A governmental body is defined inter alia, as: "the part, section, or portion of every . . . committee . . . which is supported in whole or in part by public funds, or which expends public funds." V.T.C.S. art. 6252 - 17a, §2(F). Since the committee is reimbursed for expenses, it expends public funds, and thus constitutes a public body. You first inquire whether the names of all persons considered by the committee, together with their qualifications, are required to be disclosed.

The committee considered three types of candidate: applicants; persons recommended by "distinguished individuals" whose suggestions had been solicited by the committee; and persons nominated by a professional search firm serving as consultant to the committee. In our opinion, the names of candidates in all three categories must be disclosed.

In Open Records Decision No. 257 (1980), we held that the names of applicants for the position of superintendent of schools of the Austin Independent School District and for the position of chief of police of the city of Plano are not excepted from disclosure. In Open Records Decision No. 212 (1978), this office said that "the fact that a person has recommended another or himself for appointment by the governor" does not meet "the test of disclosing 'highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person,' " and as a result, "the fact of a favorable recommendation" is not "per se an invasion of privacy of either the person recommended or the person making the recommendation." In our opinion, these decisions are dispositive of your inquiry regarding the names of candidates in all three categories. Accordingly, the names of all persons considered by the search advisory committee for the position of President of Texas A & M University should be disclosed.

Likewise, we held in Open Records Decision No. 264 (1981) that the qualifications of applicants for the position of city director of public safety are required to be disclosed. "Qualifications" refers to formal education, licenses and certificates, employment experience, professional awards and recognition, and membership in professional organizations. Open Records Decision No. 264 (1981). As to qualifications, we perceive no distinction between applicants and persons in the other two categories considered by the committee. Thus, it is our decision that the qualifications of all persons considered by the committee for the position of President of Texas A & M University should be disclosed.

Finally, you ask whether the names of finalists, i.e., persons actually recommended by the committee to the board of regents, must be disclosed. Section 3(a)(11) of the Open Records Act excepts from disclosure:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

Initially, we must determine whether the search advisory committee is included within the intra-agency memorandum exception.

As we have indicated, the committee is a formal creation of the board of regents. Its duties are specified by the board, and its members are reimbursed for their expenses. In these circumstances, we believe that the committee is authorized to act, and does in fact act, as an official arm of the Texas A & M University System sufficient to invoke the section 3(a)(11) exception. Section 3(a)(11) has been construed, however, to except only those portions of a document which "consist of advice and recommendations." Open Records Decision No. 239 (1980). The exception is:

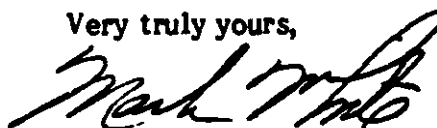
designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action.

Attorney General Opinion H-436 (1974). See Open Record Decision Nos. 239 (1980); 174 (1977); 128 (1976); 86 (1975).

In Open Records Decision No. 239 (1980), we said that a college president's recommendations to the board of regents regarding faculty tenure are excepted from disclosure by section 3(a)(11). In our view, virtually no distinction can be made between the president's recommendations to the board regarding faculty tenure in Open Records Decision No. 239, and the committee's recommendations to the board regarding the selection of a president in the situation you pose. It is thus our decision that the names of those persons recommended by the committee to the board of regents, whether or not they be denominated "finalists," are excepted from disclosure under section 3(a)(11) of the Open Records Act.

We are aware that in Open Records Decision No. 257 (1980), we said that a list of applicants for the position of chief of police of the city of Plano is available to the public. In that instance, however, the city of Plano relied only on the privacy issue under section 3(a)(1) of the Open Records Act; the city did not raise any question under section 3(a)(11), and we made no determination on that issue.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Walter Davis
Jim Moellinger